

ARTHUR H. HOMEYER

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 5495]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5495) for the relief of Arthur H. Homeyer, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is that Mr. Homeyer be relieved of all liability to repay to the United States the sum of \$1,415.33, representing the amounts of payments made on certain vouchers certified by him, to which the General Accounting Office has made exception. Reports from the General Accounting Office and Housing and Home Finance Agency recommend that this bill be enacted and Mr. Homeyer be relieved of this liability. After a careful review of the file your committee recommends favorable consideration of the bill. Reports from the Comptroller General and Housing Agency are as follows:

HOUSING AND HOME FINANCE AGENCY,  
OFFICE OF THE ADMINISTRATOR,  
Washington, D. C., November 8, 1955.

Re H. R. 5495, 84th Congress.

Hon. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in reply to your letter of July 7, requesting the views of this Agency on H. R. 5495, a bill for the relief of Arthur H. Homeyer.

Under the provisions of this bill, Mr. Homeyer would be relieved of liability to repay to the United States the sum of \$1,415.33, representing the amounts of payments made on two vouchers certified by him as an authorized certifying officer for the Public Housing Administration. The indebtedness of Mr. Homeyer arises out of exceptions taken by the General Accounting Office in the audit of these vouchers. The General Accounting Office issued certificate of settlement No. DA-1161, dated November 20, 1953, evidencing an indebtedness to the United States on the part of Mr. Homeyer in the amount of \$1,415.33.

The General Accounting Office took exception to the certification of these vouchers because certain rental payments for construction equipment in the Boston Mass., area during 1946, were made on a daily or weekly basis when monthly rates should have been applied. Under the provisions of the contract, rental rates for equipment were not to be in excess of those specified in maximum price regulation 134, Collation No. 2 (Federal Register, January 16, 1945, p. 597, et seq.). Section 2 of MPR 134 prescribed daily, weekly, and monthly rates. Section 3 (a) provided in substance that "irrespective of whether \* \* \* equipment is leased by the hour, day, week, month, or on any other basis," the applicability of the daily, weekly, or monthly rate shall be determined by the number of consecutive days during which the equipment "is in lessee's possession"; and section 3 (b) provided that section 3 (a) should apply even where the periods of rental are not consecutive, if the lessee is willing to rent the equipment continuously and the interval between the rental periods does not exceed 30 days.

The work under the contract was performed at various sites, but the equipment was, with a few exceptions, used continuously, having been moved overnight from one site to the next. Notwithstanding this continued use, the project engineer had approved a separate rental agreement for each period that the equipment was used at a particular site. This resulted in a charge of daily or weekly rates in some instances when monthly rates should have been applicable under the requirements of MPR 134 outlined above.

When the contractor first submitted vouchers which included a request for reimbursement for equipment rentals, the Boston field office suspended payment of certain amounts on the basis that daily or weekly rates had been charged where monthly rates should apparently have been applied. Thereafter, the Boston office was closed and its work was transferred to the New York field office, and the contractor submitted reclaim vouchers to the New York office, with letters setting forth his contention that the shorter term rates were properly applicable because "each proceed order under the prime contract was treated \* \* \* as a separate and distinct contract" and "separate rental agreements were written for each proceed order \* \* \*." Subsequently, Mr. Homeyer certified the reclaim vouchers for payment.

On February 4, 1954, this Agency informed the Comptroller General that an examination of the files relative to the certification of the vouchers in question had been made with a view of determining whether Mr. Homeyer might be entitled to relief under the act of December 29, 1941 (55 Stat. 875) and that the material available for examination did not appear to afford a basis for requesting such relief.

The United States Attorney in Baltimore, Md., was requested by the Department of Justice on October 25, 1954, to institute suit against Mr. Homeyer and his surety, the American Bonding Company of Baltimore. On the same date, the Department of Justice inquired of this Agency whether any steps would be taken by it to request relief for Mr. Homeyer. In a letter dated November 8, 1954, the Department of Justice was informed that this Agency had no expectation of submitting a request for relief to the Comptroller General in Mr. Homeyer's case. After the Department of Justice learned of the introduction in Congress of a bill for the relief of Mr. Homeyer, it instructed the United States attorney in Baltimore to hold the suit instituted by him in abeyance until the present session of Congress has had an opportunity to act upon the legislation.

We have taken the position, that in view of the provisions of MPR 134 and the fact that Mr. Homeyer must have been on notice that the reclaim vouchers involved an open issue, the record does not afford a basis for requesting administrative relief for Mr. Homeyer.

Although this Agency took the position that under existing law the facts did not warrant an application for administrative relief for Mr. Homeyer, we recognize that the lapse of time and other equitable considerations may be regarded by the Congress as warranting statutory relief in this case. If the Congress so determines, this Agency would have no objection to the enactment of the bill.

I have been advised by the Bureau of the Budget that there would be no objection to the submission of this report.

Sincerely yours,

ALBERT M. COLE,  
Administrator.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington 25, August 4, 1955.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of July 7, 1955, acknowledged on July 11, requesting our comments on H. R. 5495, 84th Congress, a bill to relieve Arthur H. Homeyer from liability to repay the sum of \$1,415.33 overpaid upon his certification as certifying officer with the Public Housing Administration.

The vouchers referred to in H. R. 5495, on which the General Accounting Office has stated exceptions to payment, cover reclaims of amounts previously collected from the J. F. Fitzgerald Construction Co. for overpayment of rental on construction equipment in the Boston area under contract HA(Co)vph-33. Original payments under this contract were made by the Boston regional office of the Public Housing Administration during the period November 1946, through February 1947. Audit of these payments by the General Accounting Office indicated they were computed on a daily or weekly rental rate instead of a lower monthly rental rate applicable under the terms of the contract and maximum price regulation 134 (10 Federal Register 597) incorporated in the contract by reference. Upon receipt of informal advice from the General Accounting Office to that effect, the Boston regional office of the Public Housing Administration effected collection of the overpayments totaling \$1,415.33, by deduction from other payments due the contractor in July 1947.

On September 11, 1947, the contractor submitted a reclaim voucher in the amount of \$951.99, covering a portion of the sum deducted from the July 1947 rental payments, to the Boston regional office. This voucher indicated the amount reclaimed was the subject of audit difference statement No. 13, and was accompanied by a letter from the contractor which indicated the basis for the reclaim. Since fiscal activities of the Boston regional office had been transferred to the New York office prior to receipt of the reclaim voucher, the voucher after having been approved by the project engineer and the project accountant was forwarded to Mr. Homeyer at New York City, who certified it for payment on October 8, 1947. The voucher was paid on October 15, 1947, on the strength of such certification. A second voucher in the amount of \$463.34, covering the remainder of the sum deducted from amounts due the contractor, was certified for payment by Mr. Homeyer under the same procedure on November 18, 1947, and was paid on December 9, 1947.

The General Accounting Office stated formal exceptions to these payments on December 22, 1949, and the Public Housing Administration, having failed in administrative efforts to collect the amount of the overpayment from the contractor or payee, referred the matter to the General Accounting Office as an uncollectible item. Although demand was made on the contractor for the amount involved, the amount has not been collected to date.

Certificate of settlement No. DA-1161 showing outstanding exceptions against Arthur H. Homeyer in the amount of \$1,415.33 was issued under date of November 20, 1953, and demand for payment was made on Mr. Homeyer and his surety, the American Bonding Co. of Baltimore, on December 30, 1953. Under date of October 13, 1954, the matter was referred to the Attorney General for collection. On June 24, 1955, the Department of Justice advised this Office that action on Civil No. 7828, instituted in the United States District Court for the District of Maryland against the American Bonding Co. of Baltimore and Arthur H. Homeyer for the amount of indebtedness stated in the above certificate, would be held in abeyance pending consideration by the Congress of H. R. 5495.

With respect to the proposed legislation, careful consideration should be given the responsibilities which specifically have been placed upon certifying officers by the Congress, and the provisions for relieving such officers which are contained in section 2 of the act of December 29, 1941 (55 Stat. 875, 31 U. S. C. 82c). The said act provides that a certifying officer shall be held responsible for the legality of payments and be held accountable and required to make good to the United States the amount of any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved. It further provides that the Comptroller General may, in his discretion, relieve certifying officers of liability for any payment otherwise proper whenever he finds "(1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the

payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment."

It is our opinion from the present record that the circumstances in the instant case do not warrant relief under the provisions of the above act since Mr. Homeyer, from the notation on the voucher that the amount was previously deducted and the accompanying letter showing the basis for the reclaim, should have been on notice that the amount previously was collected as an improper payment which, in the exercise of due diligence, should have been investigated prior to certification. Had such an inquiry been made, the doubtful nature of the reclaim would have become apparent and the erroneous payments been avoided. Additionally, since the United States was not legally liable for payment of the amounts involved, value for such payments was not received by the United States. The Assistant Commissioner for Administration, Public Housing Administration, in letter dated February 4, 1954, to the Comptroller General advised that the material available does not appear to afford a basis for requesting relief under the act of December 29, 1941 (55 Stat. 875).

However, the record here does not indicate Mr. Homeyer in any way personally profited from the overpayment or that any fraud was involved. The voucher was approved by the project engineer and project accountant, which may have caused Mr. Homeyer to conclude that the basis for collecting back from the contractor the amounts previously paid had proven to be inadequate and then resolved in the contractor's favor. Accordingly we would not object to the Congress, if it deems it advisable, granting relief to the involved certifying officer.

With reference to that portion of H. R. 5495 which indicates that Mr. Homeyer is unable to defend himself against action by the United States due to loss of records relating to the transactions covered by the vouchers, we are unable to offer an opinion in the absence of information identifying the specific records involved. The records on file in the General Accounting Office, including the contract and vouchers involved in the transaction, appear to be complete. The American Bonding Company of Baltimore was advised under date of December 30, 1953, that our file would be available for examination. There is no record of a request by the surety or by Mr. Homeyer for such examination.

The amount of the overpayment on voucher 415764 should be \$463.34 rather than \$463.32.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

WASHINGTON 6, D. C., February 23, 1955.

Re Arthur H. Homeyer, 5703 Greenleaf Road, Cheverly, Md.

HON. RICHARD E. LANKFORD,  
*New House Office Building,  
Washington 25, D. C.*

DEAR CONGRESSMAN LANKFORD: It was a great pleasure to meet you on Thursday, February 17, 1955, and to discuss Mr. Homeyer's problem with you. In accordance with our discussion at that time, I am submitting herein an outline of the facts concerning his case.

During 1947, while employed as certifying officer of the Public Housing Administration in New York City, Mr. Homeyer certified two vouchers for payment among many, many others. These two vouchers, voucher 2-266799 in the amount of \$951.99 dated October 1947, and voucher 415764 in the amount of \$463.34 dated December 1947, in favor of the J. F. Fitzgerald Construction Co. of Boston, Mass., are alleged by the Government to represent the difference between the higher daily and weekly OPA equipment rental rates charged to each project by the contractor under contract No. HA(Co)yph-33 between the United States of America and the J. F. Fitzgerald Construction Co. and the lower OPA monthly rate available under the said contract.

Mr. Homeyer contends that he was correct in certifying the said vouchers and is supported in this contention by his then superior in a letter written by such then superior, Mr. Murray N. Price, regional finance officer, in June 1948. A copy of Mr. Price's letter is attached hereto for your information.

Mr. Homeyer further contends that if the said vouchers were not properly certified such act was done in pure error and not as the result of any intent on his part, but resulted from an administrative change in the Public Housing Admin-



istration. The accounts of the Fitzgerald Co. were transferred into Mr. Homeyer's office as the result of the closing of the Boston Public Housing Administration Office and consolidation of activities into the New York office. A Mr. Saul Harris, project accountant from Boston went to New York to assist Mr. Homeyer with the Boston accounts including those in question here of which Mr. Homeyer had no detailed knowledge or familiarity.

Mr. Harris, now a public accountant in Boston, has replied to my request for information stating that he has no recollection of these vouchers and "I am certain that Mr. Homeyer did not certify these vouchers unless they were in order or received valid reasons for their clearance."

Officials of the Public Housing Administration in Washington advise that they have investigated the General Accounting Office exceptions to the best of their ability, but that because of the loss of records of the New York office they are unable to request a release for Mr. Homeyer. The Public Housing Administration advises that GAO will release those individuals for which Public Housing requests relief, but this is on a gentleman's agreement that a release will not be requested if Public Housing does not have full proof to substantiate its request. The loss of the above-mentioned files renders this impossible.

Mr. Homeyer further contends that by the provisions of Public Law 310, 83d Congress, certifying officers of the Army, Navy, Air Force, and Coast Guard are relieved from this type of accountability. He further contends that the vouchers in dispute concerned the removal and reerection of barracks for veterans and so had a connection with World War II and its aftermath as was argued in behalf of the military certifying officers concerning the said Public Law 310, 83d Congress.

Mr. Homeyer further contends that it is impossible for him to properly defend himself against the Government's position because: (1) Public Housing cannot find the records he needs; (2) of the witnesses who can be located, one has no recollection of these vouchers and the cost of finding and bringing the others to court is prohibitive.

Mr. Homeyer is an unfortunate victim of circumstances whose only relief lies in a private bill relieving him of accountability under the aforesaid vouchers. It is therefore respectfully requested that you use your good offices to introduce such a bill on behalf of your said constituent, Mr. Homeyer.

Such private bill will enable us to obtain a continuance of the litigation against Mr. Homeyer, civil action No. 7828 in the United States district court in Baltimore, Md., and will result, upon enactment into law, in the final dismissal of the said civil action by the United States against Mr. Homeyer.

We are grateful for your kind assistance in this regard.

Sincerely yours,

FREDERICK T. M. CROWLEY.

REGION II, NEW YORK 1, N. Y.,  
June 4, 1948.

HUGH C. ALEXANDER,  
*Auditor in Charge, General Accounting Office,  
New York 1, N. Y.*

DEAR MR. ALEXANDER: Reference is made to your inquiry dated May 24, 1948, pertaining to reclaim vouchers V-27055-110 and V-19129-91, covering payment to J. F. Fitzgerald Construction Co., operating out of old region 1.

These reclaim vouchers totaling \$1,415.33 were reimbursed to the contractor by this office on the basis of certifications by R. F. Smith, project engineer and M. Bloom, project accountant, formerly employed by the Boston office.

A review of correspondence on file indicates that reclaim payments were made for equipment on a weekly basis as entered into and approved on purchase orders and rental agreements.

The contention of the General Accounting Office of Boston was that the equipment rented should have been paid on a monthly basis, which is cheaper than rental on a weekly basis. However, it was within the jurisdiction of the project engineer to determine at the time, on which basis the rental was practical. Even though it developed later that the monthly basis was cheaper, this office had no alternative but to pay on a weekly basis as entered into and certified by the project engineer and project accountant concerned.

Sincerely yours,

MURRAY N. PRICE,  
*Regional Finance Officer.*

## AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

I, Arthur H. Homeyer, depose and say, that I adopt as my statement of the facts of my case in support of H. R. 5495, the letter dated February 23, 1955, addressed to Congressman Richard E. Lankford and signed by my attorney, Frederick T. M. Crowley, which is repeated herein as follows:

FEBRUARY 23, 1955.

Re Arthur H. Homeyer, 5703 Greenleaf Road, Cheverly, Md., H. R. 5495.

HON. RICHARD E. LANKFORD,  
New House Office Building,  
Washington 25, D. C.

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We are grateful for your kind assistance in this regard.

Sincerely yours,

FREDERICK T. M. CROWLEY.  
ARTHUR H. HOMEYER.

Subscribed and sworn to before me this 22d day of November 1955.

[SEAL]

MARTHA H. WILHELM,  
*Notary Public.*

My commission expires August 31, 1956.

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